

01-MD-01407-ORD

Hon. Barbara J. Rothstein

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JUN 21 2003
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY
BY

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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE Phenylpropanolamine (PPA) Products
Liability Litigation,

NO. MDL 1407

This document relates to all actions.

**CASE MANAGEMENT ORDER NO.
13A CONCERNING IDENTIFICATION
OF DEFENDANTS AND PRODUCTS
INGESTED**

Pursuant to Case Management Order 13, Defendants whose products are not identified in Plaintiffs Fact Sheets, if any, or the Affirmation of a given plaintiff are authorized to submit a Proposed Order of Dismissal with Prejudice. Under the terms of the current Case Management Order 13, such Proposed Orders are to be submitted together with a copy of the plaintiff's complaint, all completed Plaintiff Fact Sheets on behalf of the plaintiff, if any, the Affirmation, and a statement by the defendant's attorney of record that the Affirmation and the Plaintiff Fact Sheets, if any, contain no allegations regarding the defendant's product(s). However, the Court now recognizes that the procedure required by Case Management Order No. 13 results in an often burdensome and unnecessary filing of numerous pages and documents, which negatively impact the judicial efficiency of this Court and the parties.

CASE MANAGEMENT ORDER NO. 13A CONCERNING
IDENTIFICATION OF DEFENDANTS AND PRODUCTS
INGESTED - 1
(MDL 1407)
1445894.2

Williams, Kastner & Gibbs PLLC
Two Union Square, Suite 4100 (98101-2380)
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Seattle, Washington 98111-3926
(206) 628-6600

ORIGINAL

1 Therefore, this Case Management Order No. 13A, hereby revises Case Management
2 Order No. 13, by substituting the following paragraphs 3 through 5, for those same paragraphs
3 contained in Case Management Order 13, as follows:

4 3 Upon the completion and service of the Affirmation by and on behalf of
5 plaintiff, if the Affirmation fails to disclose the ingestion by such plaintiff of a PPA-containing
6 product manufactured and/or distributed by a named defendant, then such defendant is
7 authorized to submit to the Court the name of the plaintiff who alleges use of a PPA product,
8 requesting dismissal of that defendant with prejudice with regard to claims brought by the
9 named plaintiff.

10 4 The name or names of plaintiffs proposed for dismissal with prejudice shall be
11 filed periodically with the Court by each defendant making such proposal, in the form motion
12 attached hereto as Exhibit A. The form shall include a statement by the defendant's attorney of
13 record that the Affirmation and the Plaintiff Fact Sheets, if any, contain no allegations of
14 ingestion of the defendant's product resulting in plaintiff's alleged injury. A Proposed Order
15 (Exhibit B) shall be filed with the motion and proposed list. Each such request shall be served
16 upon plaintiffs' liaison counsel and counsel of record for each named plaintiff.

17 5 For plaintiffs represented by counsel, within ten (10) days of service, such a
18 represented plaintiff may file an opposition to the proposed dismissal with prejudice, with
19 service upon defendants' liaison counsel and defendant's attorney of record. For *pro se*
20 plaintiffs, within thirty (30) days of service, a *pro se* plaintiff may file an opposition to the
21 proposed dismissal with prejudice, with service on defendants' liaison counsel and defendant's
22 attorney of record. Within ten (10) days of service of such opposition, defendant shall file a
23 copy of the Plaintiff's Complaint, all completed Plaintiff Fact Sheets on behalf of the plaintiff,
24 if any, and the plaintiff's Affirmation, if any. If defendant fails to file the specified documents
25 in response to a plaintiff's opposition, the Court shall enter an order denying defendant's

requested dismissal with prejudice. If no opposition is submitted by a plaintiff listed in the defendant's motion, within ten (10) days of service upon plaintiffs' liaison counsel and plaintiff's counsel of record for plaintiffs represented by counsel or within thirty (30) days of service upon plaintiffs' liaison counsel and *pro se* plaintiffs, then the Court shall enter an Order dismissing the moving defendant with prejudice, crossing out the names of any plaintiffs who are not dismissed, and signing the Proposed Order, Exhibit B, dismissing all claims of the named plaintiffs, and anyone suing by, through or under them, including, but not limited to, loss of consortium claims.

6 Nothing in this Order shall prevent defendants from seeking, on a case by case basis, additional remedies or sanctions against any plaintiff with regard to discovery obligations set out in this CMO, prior CMO's and/or identification of defendants' products in a Plaintiff Fact Sheet.

DATED this 21st day of July, 2003.

Barbara J. Rothstein
UNITED STATES DISTRICT JUDGE

PRESENTED BY:

WILLIAMS, KASTNER & GIBBS PLLC

By Douglas A. Hofmann
Douglas A. Hofmann, WSBA #06393

Defendants' Co-Liaison Counsel

CASE MANAGEMENT ORDER NO. 13A CONCERNING
IDENTIFICATION OF DEFENDANTS AND PRODUCTS
INGESTED - 3
(MDL 1407)
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1 LEVINSON FRIEDMAN, P.S.

2
3 By


Lance E. Palmer

WSBA #18141

4 Plaintiffs' Liaison Counsel
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CASE MANAGEMENT ORDER NO. 13A CONCERNING
IDENTIFICATION OF DEFENDANTS AND PRODUCTS
INGESTED - 4
(MDL 1407)
1445894.2

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE Phenylpropanolamine (PPA) Products
Liability Litigation,

NO. MDL 1407

DEFENDANT'S MOTION FOR
DISMISSAL WITH PREJUDICE

This document relates to the actions listed on
Attachment A.

The undersigned counsel for _____, hereby states that
the Plaintiff Fact Sheets, if any, and/or Affirmations submitted Pursuant to Case Management
Order 13 by the plaintiffs listed on Attachment A contain no allegations that ingestion of
Defendant _____ product contributed to the cause of plaintiffs' alleged
injuries.

Defendant _____ therefore moves for Dismissal with Prejudice
from the actions brought by the listed plaintiffs, and anyone suing by, through or under them,
including, but not limited to, any loss of consortium claims, in accordance with Case
Management Orders 13 and 13A.

1 DATED this ____ day of _____, 2003.

2 FIRM NAME

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4 By _____
5 Attorney name, bar number

6 Attorneys for Defendant
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EXHIBIT A

MDL DOCKET NO.	DISTRICT CT. CAUSE NO.	CASE NAME	PLAINTIFF NAME

ATTACHMENT A

DEFENDANT'S MOTION FOR DISMISSAL WITH PREJUDICE - 3
(MDL 1407)

1445906.1

Hon. Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE Phenylpropanolamine (PPA) Products
Liability Litigation,

NO. MDL 1407

[PROPOSED] ORDER OF DISMISSAL
WITH PREJUDICE

This document relates to the actions listed on
Attachment A.

THIS MATTER came before the Court on Defendant _____ Motion for Dismissal with Prejudice from the above-entitled action pursuant to Case Management Orders Nos. 13 and 13A. Having reviewed the statement of counsel of record for Defendants that the Plaintiff Fact Sheet, if any, and/or the Affirmation submitted pursuant to Case Management Order No. 13, contain no allegations of ingestion of the Defendant's product, and the Plaintiffs having submitted no opposition within 10 days, the Court finds that the plaintiffs listed on Attachment A hereto have not alleged the ingestion of a PPA-containing product manufactured and/or distributed by Defendant _____.

IT IS HEREBY ORDERED that all remaining claims in the actions asserted by Plaintiffs listed on Attachment A hereto, and by anyone suing by, through or under them, including, but not limited to, any loss of consortium claims, against Defendant

DEFENDANT'S MOTION FOR DISMISSAL WITH PREJUDICE - 4
(MDL 1407)

1 _____, only, are hereby dismissed with prejudice pursuant to Federal Rule of Civil
2 Procedure 41. The parties shall bear their own attorney's fees and costs.

3 DATED this ____ day of _____, 2003.

4 _____
5 UNITED STATES DISTRICT JUDGE

6
7 Presented by:

8 FIRM NAME

9 By _____
10 Attorney name, bar number

11 Attorneys for Defendant _____
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EXHIBIT B

MDL DOCKET NO.	DISTRICT CT. CAUSE NO.	CASE NAME	PLAINTIFF NAME

DEFENDANT'S MOTION FOR DISMISSAL WITH PREJUDICE - 6
(MDL 1407)

1445906.1

ATTACHMENT A

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DEFENDANT'S MOTION FOR DISMISSAL WITH PREJUDICE - 7
(MDL 1407)

1445906.1